

Message Text

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ACTION OES-04

INFO OCT-01 EUR-12 ISO-00 NSF-01 EPA-01 CEQ-01 IO-10 L-02

AID-05 CIAE-00 COA-01 COME-00 DODE-00 EB-07 INR-07

NSC-05 NSAE-00 PM-03 RSC-01 SS-15 SP-02 FEAE-00 H-01

DOT-00 HUD-01 HEW-02 STR-01 INT-05 AGR-05 CEA-01

EA-06 FRB-01 NEA-09 OPIC-03 TRSE-00 CIEP-01 LAB-04

SIL-01 OMB-01 PRS-01 PA-01 USIA-06 SAM-01 /129 W

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TO SECSTATE WASHDC 8094

INFO ALL EC CAPITALS 223

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E.O. 11652: N/A

TAGS: SENV, EEC, OECD

SUBJECT: ENVIRONMENT-EC COMMISSION GUIDELINES FOR POLLUTER
PAYS PRINCIPLE (PPP)

REFS: A) STATE 1695

B) LONDON 284

C) EC BRUSSELS 10099

D) EC BRUSSELS 8744

1. BEGIN SUMMARY: EC COMMISSION OFFICIALS ARE AWARE OF
THE DIVERGENCE BETWEEN THE COMMISSION'S GUIDELINES ON THE
POLLUTER PAYS PRINCIPLE (PPP) AND THE OECD RECOMMENDATION.
THE COMMISSION IS ALSO AWARE THAT IT WILL BE QUESTIONED
ON THE GUIDELINES IN THE OECD. THE GUIDELINES ARE
BINDING UNTIL THE COMMISSION CHANGES THEM, WHICH WOULD
BE DIFFICULT AS THEY WERE "NEGOTIATED" WITH MEMBER STATES.
END SUMMARY.

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2. THE MISSION HAS HAD FURTHER DISCUSSIONS WITH EC COMMISSION OFFICIALS (CADIEUX--DIRECTORATE GENERAL FOR COMPETITION AND RICHARDSON--ENVIRONMENT OFFICE) ON THE COMMISSION'S MEMORANDUM ON THE "POLLUTER PAYS PRINCIPLE" (SEE REFTEL C). IN RESPONSE TO REFTEL A, PARA 3, WE UNDERSTAND THAT THE PRECISE LEGAL STATUS OF THE "MEMORANDUM" IS THAT IT IS A "COMMUNICATION" FROM THE COMMISSION TO THE MEMBER STATES INFORMING THEM OF THE WAY IN WHICH THE COMMISSION WILL APPLY ROME TREATY ARTICLES 92 AND 93 (STATE AIDS) TO MEMBER STATE AID SYSTEMS FOR INDUSTRIAL INVESTMENTS NECESSITATED BY ENVIRONMENT LEGISLATION OR REGULATIONS AND ALLOWABLE LIMITS TO SUCH AID. BECAUSE OF THE INDEPENDENT AUTHORITY OF THE COMMISSION TO INTERPRET AND ENFORCE ARTICLE 92 (THE EUROPEAN COURT AND ART. OR POSE RESTRAINTS ON THIS AUTONOMY), THE GUIDELINES COULD THEORETICALLY BE REVISED BY THE COMMISSION OF IT SAW FIT. IN FACT, IN THIS CASE, AS DESCRIBED BELOW, AND IN OTHERS INVOLVING ART. 92, THE COMMISSION CONSULTS WITH THE MEMBER STATES AND SUCH GUIDELINES ARE TO A LARGE DEGREE NEGOTIATED AND THEREFORE OFTEN DIFFICULT TO MODIFY. IT SHOULD BE NOTED THAT ALTHOUGH THE LESS DEMANDING GUIDELINES OF THE COMMISSION MEANS THAT THE COMMISSION WILL NOT BE ENFORCING THE OECD PPP GUIDELINES, THE MEMBER STATES MAY NOT WISH TO INTRODUCE AID PROGRAMS TAKING MAXIMUM ADVANTAGE OF THE COMMISSION'S GUIDELINES.

3. REGARDING THE QUESTION OF NOTIFYING THE OECD, RICHARDSON SAID THAT HE THOUGHT THAT THE GUIDELINES WOULD NOT BE NOTIFIED. THE MEMORANDUM IS A PRIVATE INTERNAL DOCUMENT THAT WILL NOT BE PUBLISHED IN THE OFFICIAL JOURNAL. MORE IMPORTANTLY, IT IS NOT A SYSTEM OF ASSISTANCE AS WOULD BE A MEMBER STATE PROGRAM, OR FOR EXAMPLE, A EUROPEAN COAL AND STEEL COMMUNITY ENVIRONMENT AID PROGRAM. HE SAID THE MEMBER STATES SHOULD NOTIFY THE OECD OF THEIR RESPECTIVE AID PROGRAMS. HE NOTED THAT (A) THE OECD IS AWARE OF THE GUIDELINES, (B) THE BRITISH AND DUTCH ARE UNHAPPY WITH THE GUIDELINES, AND (C) THE LIMITED OFFICIAL USE

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GUIDELINES COULD COME UP AT AN OECD MEETING ON JANUARY 22-23 AT WHICH NOTIFICATION AND CONSULTATION PROCEDURES ARE TO BE DISCUSSED.

4. REGARDING THE REFERENCE TO "MAJOR NEW OBLIGATIONS" IN PARAGRAPH 4 OF REFTEL C, BOTH CONTACTS EXPLAINED THAT THE GUIDELINES WOULD APPLY TO STATE AID SYSTEMS FOR ENVIRONMENT OBLIGATIONS REQUIRED BY BOTH EXISTING

AND NEW LEGISLATION.

5. RICHARDSON ADMITTED THAT THE MEMORANDUM REPRESENTS A REVERSAL OF POSITIONS TAKEN BY THE MEMBER STATES AND THE COMMISSION IN THE OECD. HE ACKNOWLEDGED THAT ALL INTERESTED PARTIES WERE FULLY AWARE OF THE OECD DELIBERATIONS. HIS EXPLANATION OF THE REVERSAL WAS TWOFOLD: (A) POLITICAL--THREE MEMBER STATES HAV GENERALIZED ENVIRONMENTAL AID SCHEMES (BELGIUM, FRANCE AND GERMANY), AND BELGIUM IN PARTICULAR INSISTED ON GUIDELINES ALLOWING GENERALIZED AID AND THREATENED TO BLOCK THE EC COUNCIL RECOMMENDATION ON THE POLLUTER PAYS PRINCIPLE (SEE REFTEL D) IF SUCH GUIDELINES WERE NOT ADOPTED; (B) ECONOMIC--ENVIRONMENTAL--WITHOUT ALLOWING A DEGRESSIVE AID SYSTEM THE COMMISSION DOUBTED THAT RAPID ENVIRONMENT MEASURES WOULD BE TAKEN BY THE MEMBER STATES.

6. RICHARDSON DESCRIBED THE FOLLOWING NATIONAL AID SYSTEMS FOR ENVIRONMENT INVESTMENTS:

(A) GERMANY--GENERALIZED ACCELERATED DEPRECIATION ALLOWANCE WHICH IS EQUAL TO A 10 PERCENT SUBSIDY OF THE INVESTMENT NET OF TAXES.

(B) FRANCE--AGREEMENTS BETWEEN THE GOVERNMENT AND INDUSTRIAL SECTORS TO CARRY OUT POLLUTION CONTROL MEASURES WITH SUBSIDIES AMOUNTING TO 10 PERCENT OF NEXT INVESTMENT.

(C) BELGIUM--A SUBSIDY AMOUNTING TO 45 PERCENT OF THE NET INVESTMENT FOR WATER POLLUTION CONTROL INVESTMENTS. GREENWALD LIMITED OFFICIAL USE

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